[JOINT COMMITTEE PRINT]

DESCRIPTION OF TAX BILLS
(S. 2012, S. 2015, S. 2092, S. 2113, S. 2176, S. 2321, and S. 2413)
RELATING TO FEDERAL AND STATE LEGISLATORS' AWAY-FROM-HOME EXPENSES

SCHEDULED FOR A HEARING

BEFORE THE

SUBCOMMITTEE ON TAXATION AND DEBT MANAGEMENT

OF THE

COMMITTEE ON FINANCE

ON JUNE 18, 1982

PREPARED FOR THE USE OF THE

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BY THE STAFF OF THE

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INTRODUCTION

The bills described in this pamphlet have been scheduled for a public hearing on June 18, 1982, by the Senate Finance Subcommittee on Taxation and Debt Management. The hearing will focus on the tax treatment of away-from-home expenses of Federal and State legislators.

There are seven bills relating to the tax treatment of away-from-home expenses of Members of Congress scheduled for the hearing: S. 2012 (introduced by Senator Proxmire and others), S. 2015 (introduced by Senator Domenici), S. 2092 (introduced by Senator Chafee), S. 2113 (introduced by Senator DeConcini), S. 2176 (introduced by Senators Armstrong and Weicker), S. 2321 (introduced by Senators Mattingly and Specter), and S. 2413 (introduced by Senator Long). In addition, the hearing will also consider the tax treatment of travel expenses of State legislators.

The first part of the pamphlet is a summary of the bills. This is followed in the second part with a description of present law. The third part discusses the historical development of rules affecting Members of Congress, and part four discusses the treatment of State legislators. Part five is a description of the provisions of the seven bills relating to Members of Congress.

I. SUMMARY

In general, an individual is allowed a deduction from gross income for all ordinary and necessary expenses incurred in carrying on any trade or business. Deductible expenses include reasonable and necessary travel expenses, including expenses for meals, lodging, and transportation, incurred while away from home overnight in the pursuit of a trade or business.

The deduction of travel expenses is subject to certain limitations. In general, out-of-pocket travel expenses for meals and lodgings incurred by a taxpayer are deductible only if they are (1) incurred while away from home overnight, (2) reasonable and necessary for the taxpayer's business and directly attributable to it, (3) not lavish or extravagant, (4) not reimbursable, and (5) properly substantiated. No deductions are allowed for personal, living, and family expenses except as expressly allowed under the Code.

Like other businessmen, Members of Congress may deduct ordinary and necessary business expenses, including travel expenses incurred while away from home overnight in the pursuit of a trade or business. In general, the same limitations on deductibility applicable to other businessmen apply to Members of Congress.

The rules with respect to Members of Congress have, at various times, been explicitly provided by statute in three areas: (1) the determination of their tax homes, (2) the maximum amount deductible as living expenses in Washington, D.C. and (3) the rules relating to substantiation of Washington, D.C. expenses. Rules with respect to State legislators also have been provided by statute in these three areas.

The bills described in the pamphlet would modify some or all of the statutory rules governing the travel expenses of Members of Congress. None of the bills would modify the treatment of State legislators' expenses.

II. PRESENT LAW

A. Overview

General rule

In general, an individual is allowed a deduction from gross income (i.e., an "above-the-line" deduction) for all ordinary and necessary expenses incurred in carrying on any trade or business. Deductible expenses include travel expenses, such as meals, lodging, and transportation, incurred while away from home overnight in the pursuit of a trade or business (sec. 162(a)(2)).

The cost of meals includes the actual cost of food and expenses incident to preparation and serving. The cost of lodging includes rental, repairs, insurance, laundry and utilities. Lodging costs also include depreciation on a house and household furnishings owned by the taxpayer and used while away from home on business. Mortgage interest and real estate taxes are deductible under other provisions of the Code (secs. 163 and 164).

No deductions are allowed for personal, living, and family expenses, except as expressly allowed under the Code. The taxpayer must substantiate both the amount and business purpose of an expense. In general, this requirement may be met by adequate records or sufficient evidence corroborating the taxpayer's statements regarding the amount, time, place, and business purpose of the expenditure.

For determining the deductibility of travel expenses, a taxpayer's home generally is considered to be located at his regular place of business or his regular place of abode in a real and substantial sense.

General requirements for deductibility of business expenses

The deduction of travel expenses is subject to certain limitations. In general, out-of-pocket travel expenses for meals and lodgings incurred by a taxpayer are deductible only if they are (1) incurred while away from home overnight, (2) reasonable and necessary for the taxpayer's business and directly attributable to it, (3) not lavish or extravagant, (4) not reimbursable, and (5) properly substantiated. No deductions are allowed for personal, living, and family expenses except as expressly allowed under the Code.

B. Away from Home Overnight

For travel expenses to be deductible, a taxpayer must be "away from home." The Internal Revenue Service and the Tax Court take the position that a person's tax home means the location of the taxpayer's principal place of business, and not where the taxpayer chooses to maintain his residence. Other courts have used a permanent place of abode test. The Supreme Court has yet to take a position on the issue. However, the Supreme Court has indicated that where the employer gains nothing from the taxpayer's personal decision to reside

in a different city from the place of business, the expenses are not considered to be incurred in the pursuit of business and therefore are treated as nondeductible personal expenses.[1]

If the taxpayer is regularly engaged in business at two or more separate locations, the Internal Revenue Service has ruled that the taxpayer's home is considered to be located at his principal place of business.[2] If the taxpayer maintains his family residence at the minor place of business, travel from the principal place of business to the minor business location is considered to be travel away from home when the primary purpose for the return to the location of his residence is business in nature.

A taxpayer does not necessarily lose his tax home when he works at a different location for a temporary period of time. However, if the stay is indefinite, the taxpayer may be considered to have changed his tax home. In determining whether a job is temporary or permanent, all facts and circumstances are considered. The Internal Revenue Service views a one-year or more stay as strongly indicating a presence beyond a temporary period.[3]

In general, the taxpayer's home includes the general area surrounding his regular place of business. Also, it is wellsettled that "away from home" includes only overnight trips or trips on which a stop for sleep is required.

C. Business *v.* Personal Expenses

Overview

Expenses incurred while away from home overnight are deductible only to the extent reasonable and necessary to the taxpayer's trade or business. Thus, it is necessary to distinguish business expenses from personal or family expenses. A taxpayer may not deduct as a business expense clothing, medical expenses, and charitable contributions, although medical expenses and charitable contributions may be deductible under other provisions of the Code. Clothing generally is considered a nondeductible personal expense.

Spouse's presence

In general, expenses attributable to the presence of a spouse (or other family member) are not deductible unless it can be shown adequately that the spouse's presence has a bona fide business purpose. The performance of some incidental service by the spouse or child does not constitute a bona fide business purpose.

A business purpose does not include acting as a hostess at receptions,[4] or assisting in making business acquaintances.[5] Merely attending luncheon, and dinners is not sufficient to establish a business purpose.[6] However, the court in *United States* v. *Disney*[7] has held that the travel expenses of the wife of a corporation president are deductible if the dominant purpose of the wife's presence was to serve her

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[1] *Commissioner* v. *Flowers*, 326 U.S. 465 (1946), *rev'g*, 148 F.2d 163 (5th Cir. 1945).

[2] Rev. Rul. 75–432, 1975–2 C.B. 60.

[3] Rev. Rul. 60–189, 1960–1 C.B. 60.

[4] *See, Sheldon* v. *Commissioner*, 299 F.2d 48 (7th Cir. 1962), *aff'g*, T.C. Memo 1961–44.

[5] *See, Fenstermaker* v. *Commissioner*, T.C. Memo 1978–210.

[6] Rev. Rul. 56–168, 1956–1 C.B. 93.

[7] 413 F.2d 783 (9th Cir. 1969).

husband's business purpose in making the trip and it was reasonable and necessary (and not merely helpful) for her to spend a substantial amount of her time in assisting her husband in fulfilling that purpose. In holding that Mrs. Disney's presence was necessary to her husband's business on that trip, the court noted that if Mr. Disney had held a less powerful executive position, the presence of the wife would have been considered necessary only if employer insistence amounted to a condition of employment.

Incidental personal activity

The Internal Revenue Service has ruled that an employee can deduct not only his expenses for meals and lodging while making trips to and from a temporary post, but also expenses for meals and lodging for the entire time during which his duties prevent him from returning to his regular post of duty.[8] One court has held that a State Supreme Court Justice who was required to spend the 9-month court term away from home could deduct rent for an entire year since he was required to sign a 1-year lease to obtain an apartment for the 9-month term.[9] The court stated that there is no requirement that a person on business at a temporary post stay in a hotel or other transient residence.

Allocation between business and personal expenses

If a taxpayer's expenses, while away from home are both business and personal, the taxpayer must make an allocation to determine what portions of the expenses are deductible. For example, if the taxpayer were unable to show a business purpose for the presence of a family member, the taxpayer would have to exclude that portion of the expenses attributable to the family member.

In general, the required allocation must be made on an incremental basis. For example, if a taxpayer stays in a hotel, the difference between a single rate and a multiple occupancy rate would be nondeductible. One court has held, though, that if a child is present in a rented apartment at a temporary business location for only a very short time (i.e., a few weekends and part of one month), no allocation is required since the apartment was not provided to supply the child with a place to stay.[10] Also, the court did not require an allocation for the wife's use of the apartment. It is unclear whether an allocation would have been required if the dwelling unit had been a house or large apartment. The size of the dwelling might indicate a nonbusiness purpose of providing lodging for family members. With respect to meals, all costs attributable to the family member would be nondeductible.

Special limitations on personal use of residence

Prior to enactment of section 113 of the Black Lung Benefits Revenue Act of 1981 (Pub. L. 97–119), the application of the tax rules governing business use of a home (sec. 280A)[11] could have resulted in

[8] Rev. Rul. 75–432, 1975–2 C.B. 60.

[9] *United States* v. *LeBlanc*, 278 F.2d 571 (5th Cir. 1960).

[10] *United States* v. *LeBlanc*, supra.

[11] Section 280A was enacted as part of the Tax Reform Act of 1976 to replace vague standards on which the courts and the Internal Revenue Service differed concerning the deductibility of expenses incurred in connection with use of the taxpayer's home in a trade or business or income producing activity or in connection with the rental of vacation homes and other residential real estate.

denial of lodging expenses otherwise deductible as traveling expenses. For example, assume a businessman buys a condominium in New York because of his frequent business trips to that city. If section 280A were to apply, depreciation and other lodging expenses could be disallowed.

In general, section 280A limits the amount a taxpayer may deduct as expenses attributable to the business use of a dwelling unit if the taxpayer uses the dwelling unit for personal purposes during a taxable year for a total of 14 days or more. If this limitation is exceeded, deductions attributable to business use are limited to the amount by which the gross income derived from the business use of the dwelling unit exceeds the deductions otherwise allowable without regard to the business use of the dwelling (*e.g.*, interest and taxes).

Under section 280A (as it appeared prior to Pub. L. 97–119), a taxpayer was deemed to have used a dwelling unit for personal purposes for a day if, for any part of the day, the unit is used for personal purposes by (1) the taxpayer or any other person who owns an interest in the home; (2) the brothers and sisters, spouse, ancestors, or lineal descendants of the taxpayer, or other owners; (3) any individual who uses the unit under a reciprocal arrangement (whether or not a rental is charged); or (4) any other individual who uses the dwelling unit during a day unless a fair rental is charged.

If a businessman used a dwelling for travel away from home but he or his family also used the dwelling for personal purposes for a total of more than 14 days per year, section 280A could have applied, eliminating the deduction for lodging expenses (other than the cost of a hotel room) otherwise allowable.

The Black Lung Benefits Act revised the rules for applying section 280A to family rentals. The Act provided that section 280A is not to be applied to limit any deduction allowable under section 162 (or any deduction that meets the tests of section 162(a)(2) but is allowable under another provision, such as section 167 governing depreciation) for travel expenses while away from home.

D. Political or Campaign Expenses

In general, no deduction is allowed under section 162 for payments for political purposes. Expenses disallowed under this rule include the cost of campaigning for political office, the cost of supporting a political candidate, and the cost of attending certain political conventions. Such payments generally are considered personal expenses and not trade or business expenses.

The courts have uniformly disallowed deductions for campaign expenses paid by a candidate for public office, whether successful or unsuccessful, and whether for election to a position previously held or to a new position. These expenses are considered to be nondeductible personal expenses in that they are incurred in seeking or qualifying for a new trade or business. The courts also have refused to allow campaign expenses to be amortized over the term of office.[12]

With respect to payments made on behalf of candidates for public office, section 41 allows a credit for one-half of all political contributions up to a limit of $50 ($100 on joint returns). However, no trade or business deduction is allowed for any amount incurred for partic-

[12] *See, May* v. *Bowers*, 201 F.2d 401 (4th Cir. 1953).

ipation in, or intervention in, any political campaign on behalf of any candidate for public office.

In addition, no deduction is allowed for amounts paid for advertising or for admission to a dinner or program if the proceeds inure to the benefit of a political party or candidate (sec. 276).

With respect to expenses incurred in attending a convention or other meeting, the issue is whether there is a sufficient relationship between the performance of the taxpayer's trade or business and attendance at the convention. For example, if an elected official attends a convention for political, social or other purposes unrelated to his or her official functions, the expenses are nondeductible. In a recent decision,[13] the United States Tax Court held that a Congressman's travel expenses paid or incurred in connection with his attendance at the Democratic National Convention or the Black National Political Conference were not deductible as ordinary and necessary expenses incurred in the performance of his public office as a Congressman. The court found that the Democratic National Convention was "quintessentially political" because it involved formulating a platform and electing candidates for the Office of President and Vice President. Therefore, the Congressman's expenses in attending the convention were not directly related to his trade or business. However, the court noted that section 7701 (a) (26) recognizes that the term "trade or business" includes the performance of the functions of a public office. Thus, the court indicated that expenses incurred in direct connection with submissions to Committees or individual Members of Congress or with respect to any specific legislation or proposed legislation may be deductible.

E. Lavish or Extravagant Expenses

Under the general rule, business expenses must be ordinary and necessary to the conduct of business. For meals and lodging, which are listed as travel expenses included within the general rule, the statute specifically excludes expenses that are "lavish or extravagant under the circumstances."

F. Reimbursements

In general, amounts are not deductible to the extent they do not represent an actual out-of-pocket expense. Thus, an expense for which a taxpayer is entitled to reimbursement is not deductible. The courts have held that reimbursable expenses for which a taxpayer fails to request reimbursement generally are not considered necessary expenses and, thus, are not deductible by the taxpayer.[14]

The Internal Revenue Service has ruled that to the extent government officials can establish that they incurred unreimbursable expenses directly in connection with their official duties, out-of-pocket expenses may constitute a charitable contribution.[15]

The courts have applied the same rule to out-of-pocket expenses for which reimbursement was available but not claimed because of a desire to make a donation to the charity.[16]

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[13] *Diggs* v. *Commissioner*, 76 T.C. 888 (1981).

[14] *See, Coplon* v. *Commissioner*, 277 F.2d 534 (6th Cir. 1960), *aff'g*, T.C. Memo 1959–34; *Kennelly* v. *Commissioner*, 56 T.C. 936 (1971), *aff'd without opinion*, 456 F.2d 1335 (2nd Cir. 1972).

[15] *See*, Rev. Rul. 59–160, 1959–1 C.B. 59.

[16] *Wolfe* v. *McCaughn*, 5 F. Supp. 407 (E.D. Pa. 1933).

G. Substantiation

No deduction for travel expenses (including meals and lodging) is allowed unless the taxpayer substantiates expenditures. In general, to meet the substantiation requirements, a taxpayer must maintain an account book, diary, statement of expense or similar record supported by documentary evidence such as receipts, paid bills, and cancelled checks. The records and documentary evidence must clearly establish the elements of each expenditure sought to be deducted, namely, the amount, time, place, and business purpose of the expense. The record of these elements must be made at or near the time of the expenditure. Documentary evidence is specifically required for lodging expenses and for any other expenditure of $25 or more. A written statement of the business purpose of an expenditure is generally required, unless such business purpose is evident from the facts and circumstances surrounding the expenditure.

Under certain circumstances, an employee reimbursed for travel by the employer under a subsistence or per diem arrangement is not required to substantiate the amount of the expense or report the reimbursement as income. To qualify, (1) the employee must adequately account to the employer, and (2) the reimbursement must not exceed actual business expenses. The adequate accounting requirement will be considered met if (1) the employer reasonably limits payments of travel expenses to those that are ordinary and necessary in the conduct of a trade or business, (2) the employee substantiates by records or other evidence the time, place, and business purpose of the travel, and (3) the reimbursement does not exceed the greater of $44 or the maximum Federal per diem applicable for the locality in which the travel occurs.[17]

The Internal Revenue Service will rule that an employer reasonably limits payments under an actual subsistence arrangement to ordinary and necessary expenses if the employer maintains adequate internal controls, such as requiring verification and approval of the expense account by a responsible person other than the employee. For per diem arrangements, the Internal Revenue Service must determine if the employer's travel allowance practices are based on reasonably accurate estimates of travel costs, including recognition of cost variances encountered in different localities. If the employer's reimbursement arrangement is considered to reasonably limit payments to ordinary and necessary expenses but the payment on any occasion exceeds deductible business expenses, the employee must report the excess as income. If the taxpayer wants to deduct actual expenses exceeding the reimbursement, the employee must include the reimbursement income and substantiate all deductions.

[17] Rev Rul. 80-62, 1980-1 C.B. 63, as modified by Rev. Rul. 80-203, 1980-2 C.B. 101.

III. HISTORICAL DEVELOPMENT OF RULES AFFECTING MEMBERS OF CONGRESS

A. Overview

Like other businessmen, Members of Congress may deduct ordinary and necessary business expenses, including travel expenses incurred while away from home overnight in the pursuit of a trade or business. In general, the same limitations on deductibility applicable to other businessmen apply to Members of Congress.

The rules with respect to Members of Congress have, at various times, been explicitly provided by statute in three areas: (1) the determination of their tax homes, (2) the maximum amount deductible as living expenses in Washington, and (3) the rules relating to substantiation of Washington expenses.

B. Tax Home and Limitations on Deductions

Prior to 1952, the Board of Tax Appeals in *George W. Lindsay*,[18] had held that on the facts of that case the home of that Member of Congress was Washington, D.C. The Court based its conclusion largely on the fact that, under then existing law, the official duties of Members of Congress were to be performed in Washington, D.C.

In 1952, Congress amended the Code to provide a uniform rule under which the tax home of any Member of Congress would be considered their residence within the home State or district (Pub. L. No. 83–178). However, under the amendment, a Member could deduct only $3,000 of living expenses incurred in Washington, D.C.

The legislative history of the 1952 amendment and the case law suggest that the amendment did not waive the requirement that the trip must include an overnight stay.[19] Under this interpretation, a Member who commuted to Washington from the home State on a daily basis and did not stay in Washington overnight could not deduct travel expenses (e.g., meals and transportation). Those expenses would be treated as nondeductible personal commuting expenses.[20] It was unclear whether a Member who lived within commuting distance of Washington but stayed overnight in Washington could deduct travel expenses. The Internal Revenue Service takes the position that a person's tax home is the general area surrounding the person's abode.[21] If the Members's place of residence within the home State was

[18] 34 B.T.A. 840 (1936).

[19] *See*, 98 Congressional Record 5280 (1952); *Chappie* v. *Commissioner*, 73 T.C. 823, 831 (1980).

[20] Although a deduction for meals while in Washington might not be allowed as a travel expense under section 162(a)(2) the cost of business meals in surroundings generally conducive to business discussions would be deductible under general business expense rules.

[21] Rev. Rul. 190, 1953–2 C.B. 303.

within commuting distance of Washington, Washington might be considered within the area of the Member's home. Under that interpretation, travel expenses could be denied even if the Member stayed overnight in Washington.

C. Recent Legislative Actions

In 1981, Congress enacted several other changes affecting the deductibility of travel expenses of Members of Congress. As part of the First Continuing Resolution, Congress repealed the $3,000 cap on the deduction of a Member's living expenses in Washington, D.C. As part of the Third Continuing Resolution, Congress made that change retroactive to January 1, 1981.

The Black Lung Benefits Revenue Act of 1981 also made changes affecting the deductibility of travel expenses of Members of Congress. For all taxpayers, including Members of Congress, the Act makes clear that the rules under section 280A disallowing lodging costs in connection with business use of a home do not apply with respect to travel expenses allowable under section 162(a)(2) (or any deduction that meets the tests of that section but is allowable under a different section). Also, the Act adds a provision requiring Treasury to prescribe amounts deductible as travel expenses by Members of Congress without substantiation. Under the Act, Treasury may not prescribe an amount in excess of an amount determined to be appropriate under the circumstances.

D. Treasury Regulations

The Treasury Department has issued regulations in temporary and proposed form prescribing amounts deductible by Members of Congress without substantiation. In general, the regulations allow Members of Congress to elect to deduct a designated amount as travel expenses for each Congressional day in the year in lieu of substantiating their actual travel expenses.

The amount deductible is determined by reference to the maximum amount of reimbursement available to a government employee traveling to Washington, D.C., which is currently $75. For a Member who elects to deduct interest and taxes attributable to the ownership of a personal residence in the Washington, D.C. area, two-thirds of the maximum Federal reimbursement ($50) is allowable for each Congressional day. For Members who do not elect to deduct interest and taxes for the Washington residence, the full $75 per Congressional day is allowable.

The number of Congressional days for a Member is the number of days in the taxable year less the number of days in periods in which the Member's Congressional chamber was not in session for 5 consecutive days or more (including Saturday and Sunday). The number of days for a Member is determined without regard to whether the Member was in the Washington, D.C. area on those days. The number of Congressional days for 1981 was 262 for the House and 256 for the Senate.

The election under the Treasury regulations does not prevent a Member from claiming additional amounts for travel expenses in the

Washington, D.C. area. If the taxpayer does not elect to use the designated amounts to compute his deduction, all of his deductions must be substantiated. The Treasury regulations do not apply to expenses incurred outside the Washington, D.C. area. Those travel expenses also must be substantiated.

If a Member lives in a residence owned by him or her in the Washington, D.C. area, the Member must reduce his or her basis in the Washington residence by 20 percent of the amount elected (either the $50 or $75 amount) under the regulations to reflect the portion of deductible expenses attributable to depreciation of the residence.

The regulations were issued in temporary form to permit the public to comment. A public hearing on these regulations was held on May 11, 1982.

E. Pending Congressional Actions

On May 27, 1982, the Senate passed the Urgent Supplemental Appropriations Bill for 1982 (H.R. 5922). A provision of that bill added by the Senate would limit the deduction of living expenses by Members of Congress to $3,000 per year (the prior law limit). In addition, the bill would repeal the rule requiring Treasury to prescribe an amount of travel expenses that may be deducted by a Member of Congress without substantiation (the so-called $75/50 a day rules). The changes would apply for taxable years beginning after December 31, 1981.

On June 9, 1982, the House agreed to a motion to instruct the House conferees to agree to the Senate amendment to the Urgent Supplemental Appropriations Bill regarding the tax treatment of travel expenses of Members of Congress.

None of these actions pending in Congress would affect the rule designating the Member's home state or district as that Member's tax home or the travel expense rules for State legislators.

IV. AWAY-FROM-HOME EXPENSES OF STATE LEGISLATORS

A. Historical Development

Prior to the Tax Reform Act of 1976, there was no special rule for ascertaining the location of a State legislator's tax home. As a result, the generally applicable rules, described above, determined the location of a State legislator's tax home. In general, the courts held that if a State legislator who has no other trade or business is required to spend most of his working time at the State capitol, that area is considered to be his principal post of duty and, under the principal place of business test, his tax home.[22] If a legislator is engaged in a separate trade or business elsewhere, all facts and circumstances must be examined to determine which place is his tax home.

The Tax Reform Act of 1976 provided an election for the tax treatment of State legislators for taxable years beginning before January 1, 1976. This was extended for one year by the Tax Reduction and Simplification Act of 1977 to taxable years beginning before January 1, 1977, and was extended further by Public Law 95–258 to taxable years beginning before January 1, 1978. Public Law 96–167 again extended the State legislator election to taxable years beginning before January 1, 1981.

Under this election, a State legislator could treat his or her place of residence within the legislative district as his or her tax home for purposes of computing the deduction for living expenses. If this election was made, the legislator was treated as having expended for living expenses an amount equal to the sum of the daily amount for per diem generally allowed to employees of the U.S. Government for traveling away from home, multiplied by the numbers of days during that year that the State legislature was in session, including any day in which the legislature was in recess for a period of four or fewer consecutive days. For this purpose, the rate of per diem to be used was the rate that was in effect during the period for which the deduction was claimed. In addition to days in session a State legislator could count each day in which his or her physical presence was formally recorded at a meeting of a committee of the State legislature.

The State legislator provision of the 1976 Act was construed by the U.S. Tax Court in *Eugene A. Chappie* v. *Commissioner*, 73 T.C. 823 (1980). In that case, the Tax Court held that the generally applicable business deduction rules (sec. 162) required a California Assemblyman to be away from home overnight in order to be entitled to a business deduction for traveling and living expenses. Because section 604 of the Tax Reform Act of 1976 made no change in this rule for State legislators, the Tax Court held that no deduction was available as to days when a legislator actually was not away from his tax home (i.e., his place of residence in the district represented) overnight. The Court

[22] *Montgomery* v. *Commissioner*, 532 F.2d 1088 (6th Cir. 1976), *aff'g*, 64 T.C. 175 (1975).

explained that the rules pertaining to business deductions and commuting expenses (secs. 162 and 262) precluded a deduction for expenditures incurred in the legislator's travels to and from Sacramento.

B. Current Rules

The Economic Recovery Tax Act of 1981 modified, and made permanent, the provisions of the Tax Reform Act of 1976 which relate to a State legislator's annual election to treat his or her place of residence within the legislative district represented as his or her tax home.

Present law allows a State legislator to elect, for any taxable year, to treat his or her residence within the legislative district represented as his or her "tax home" for purposes of computing the deduction for expenses. An electing legislator is treated as having expended for living expenses (incurred in connection with the trade or business of being a legislator) an amount equal to the sum determined by multiplying each of the individual's legislative days during the taxable year by the greater of: (1) the amount generally allowable with respect to such a day to employees of the executive branch of the State of which the individual is a legislator for per diem while away from home, or (2) the amount generally allowable for per diem with respect to such day to employees of the U.S. Government for traveling away from home. A State per diem allowance is taken into account only to the extent that it does not exceed 110 percent of the Federal per diem.

An electing legislator is deemed to be away from home in the pursuit of a trade or business on each legislative day. This is an exception to the general travel expense rules. Because such an individual is deemed to be away from home in the pursuit of a trade or business while incurring the deemed expenses, such an electing legislator is not required to be present at the legislature for that day (or for any day in a legislative recess of four or fewer consecutive days), or away from home overnight. This change in effect reversed the Tax Court decision in *Chappie* as to electing State legislators, for open and future tax years. However, no provision was made for opening closed years.

In determining the appropriate rate of per diem to be utilized for the deduction computation, the rate of both Federal and State per diems to be used are those rates which were in effect for the legislative days for which deduction is claimed.

For taxable years beginning after 1980, present law provides that the generally applicable State legislator rules do not apply to any legislator whose actual home within the district represented is 50 miles or less from the State capitol building. The 50 miles is to be determined by measuring the actual distance a legislator would be required to travel by surface transportation between his or her district residence and the State capitol building. As a result, such legislators may not elect to have this provision apply to them. Instead, such legislators must establish the location of their tax homes under the generally applicable facts and circumstances test. In addition, legislators excluded by this 50-mile test may not use the statutory formula for computing deductible business expenses. Rather, these legisaltors are subject to the general business expense rules.

The provisions of the Economic Recovery Tax Act of 1981 affecting State legislator's travel expenses generally are effective for taxable years beginning on or after January 1, 1976.

V. DESCRIPTION OF BILLS

(AWAY-FROM-HOME EXPENSES OF MEMBERS OF CONGRESS)

1. S. 2012—Senators Proxmire, Danforth, Durenberger, Heinz, Matsunaga, Mitchell, Moynihan, et al; and S. 2113—Senator DeConcini

Explanation of the bills

The bills would restore the $3,000 cap on the deductibility of living expenses incurred by Members of Congress in the Washington, D.C. area for business purposes. The bills also would eliminate the special rule permitting Members to deduct a designated amount for travel expenses in lieu of substantiation. The bills would retain the rule designating as the tax home of a Member of Congress the members residence within the home state or district. The bills also would retain the 1981 amendment to section 280A that affects the deductibility of expenses incurred in connection with business use of a home. However, the amendment to section 280A would not have significant practical effect under the bill because Members generally would have $3,000 of expenses without regard to expenses incurred in connection with their use of a dwelling in Washington, D.C.

The amendment would not affect the deductibility of travel expenses by State legislators.

Effective date

The provision restoring the $3,000 cap would apply to taxable years beginning after December 31, 1980. Thus, amended returns for 1981 calendar year returns would be required for Members that claimed expenses in excess of that amount. The other provisions of the bill would apply to open taxable years beginning after December 31, 1975.

2. S. 2015—Senators Domenici and Stennis

Explanation of the bill

The bill would impose a $6,000 cap on the deductibility of living expenses incurred by Members of Congress in the Washington, D.C. area for business purposes. The bill also would eliminate the special rule permitting Members to deduct a designated amount for travel expenses in lieu of substantiation. The bill would retain the rule designating as the Member's tax home his or her residence within the home State or district. The bill also would retain the 1981 amendment to section 280A that affects the deductibility of expenses incurred in connection with business use of a home.

The bill would not affect the deductibility of travel expenses by State legislators.

Effective date

The provision imposing the $6,000 cap would apply to taxable years beginning after December 31, 1980, requiring amended returns for Members claiming expenses in excess of that amount. The other provisions of the bill would apply to open taxable years beginning after December 31, 1975.

3. S. 2092—Senator Chafee; S. 2176—Senators Armstrong and Weicker; and S. 2321—Senator Mattingly

Explanation of the bills

The bills would eliminate the special rule permitting Members to deduct a designated amount per Congressional day for travel expenses incurred in Washington, D.C. for business purposes in lieu of substantiation. The bills would permit Members to deduct without a specific dollar limitation those travel expenses the Member can substantiate as ordinary and necessary business expenses under section 162. The bills would retain the rule designating as the Member's tax home his or her residence within the home State or district. The bills would also retain the 1981 amendment to section 280A that affects the deductibility of expenses incurred in connection with business use of a home.

The bills would not affect the deductibility of travel expenses by State legislators.

Effective date

S. 2092 and S. 2321 would apply to open taxable years beginning after December 31, 1975, requiring amended returns to be filed by those Members who claimed amounts in 1981 in excess of amounts that can be substantiated as deductible travel expenses. S. 2176 would apply to taxable years beginning after December 31, 1980, and thus also may require amended returns for 1981.

4. S. 2413—Senators Long, Bentsen, Mitchell, Grassley, et al

Explanation of the bill

The bill would repeal all rules expressly governing the deductibility of travel expenses by Members of Congress. The bill would repeal the rule designating as the tax home of a Member of Congress the Member's residence within the home State or district. The determination of a Member's tax home would be made on a case-by-case basis under the general principles applicable to all taxpayers. The bill would repeal the special rule permitting Members to deduct a designated amount per Congressional day in lieu of substantiation. The bill would retain the 1981 amendment to section 280A that affects the deductibility of expenses by all taxpayers incurred in connection with the business use or a home.

The bill would not affect the deductibility of travel expenses by State legislators.

Effective date

The bill would apply to taxpayers beginning after December 31, 1981, eliminating the need to file amended returns for 1981.

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